



SCHOOL BUS, INC.

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DEPARTMENT OF EDUCATION "POINT OF CONTACT" **DECEMBER 2008 NEWSLETTER**

Don't miss this Winter Meeting of the SDSTA Meeting

Dan Duenwald (Clark) and Dave Lucas (Brookings) have been working very hard on getting a site put together for this meeting and I think you are really going to enjoy the winter meeting program. We are very excited to bring you Sheldon "Shelly" Johnson past Superintendent from Cottonwood, Minn. Not only was Shelly involved in the fatal bus accident this past February that claimed the lives of four children, he was also Superintendent at Monticello, Minn., where he was involved in another fatal bus accident. Shelly will be in Brookings at the Days Inn at 10:30a.m., Dec. 30, to speak about both accidents. He will speak about the roll of the superintendent, principal, school counselor, school bus supervisor, clergy, school bus driver and emergency personal. We all hope we are never involved in a fatal bus accident but if we were we would like to say we did everything possible to make things run smoothly in the days to come after the accident. Shelly will talk about everything that needs to be done before and after tragedies like these. We will also be doing a hands-on exercise called "Smoke the Bus" where participants will enter a school bus filled with non-irritant smoke and try to rescue something. If you would ever be involved in an accident like this then this meeting will be very important for you to attend. We would like you to RSVP Dave Lucas Dave.Lucas@k12.sd.us if you plan on attending this meeting, plan on having lunch with us and talking with Shelly. We everyone there. hope to see

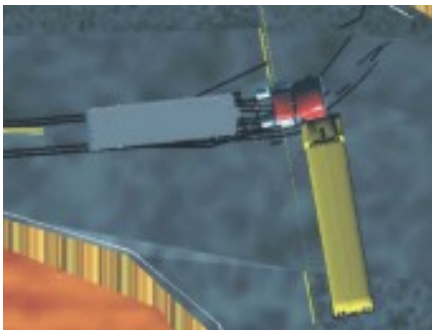
Backing Up

Backing any vehicle is a hazardous maneuver that avoided as much as possible. Backing a school made more hazardous by the lack of visibility the what is behind the vehicle. The best method for accidents from backing is to park or position that backing will not be necessary. When it is are several things you can do to minimize the associated with backing. Know what is in your This will mean getting out and look what is behind Check your clearance to the sides and overhead near the path your vehicle will take. Don't forget

Monticello, Minnesota



should be bus vehicle is driver has to preventing vehicles so required there hazards path of travel. your vehicle. both in and the front



clearances. Swing of the front end will put it in a position different than it is in before backing. Try and back and turn toward the driver's side (left side) of the vehicle if possible. This will allow you to see much more than if you are backing toward the other (right) side. This will also allow you to watch the rear of your vehicle by looking out the side window. If you have to drive around the block to position for this backing maneuver it will be worth the effort by increasing your visibility. Use a helper or guides if available however make sure of a few things before you get this guide's assistance. Agree on hand signals and make sure to look for the signals and your mirror at all times. see the guide, TOP

immediately. Discuss with the guide the need to keep them guide is not available, you may be able to block off an area at the bus with cones/reflectors to warn traffic and act as your you do need to back up then activate the four-way hazard



guide in If you can't visible. If a the rear of guide. If warning

lights and open your window to be able to hear clearly. Minimize as many distractions as possible (i.e. radio). Use your horn to signal your backing maneuver unless you have a backup warning device. Use your mirrors to check your path of travel to the rear and sides (don't forget that you can't see everything in your mirrors). Turn the top of the steering wheel toward the direction you want to go. Proceed in reverse SLOWLY. Backing slowly will allow you to make corrections before you get too far off course and also allow you to stop suddenly if needed. While you may have checked your path, unless you have a helper it is possible that your path clearance can change while you are backing. Pedestrians, other motorists, or other objects can materialize in your path while you are backing. Be aware of noises and vibrations in and around the bus as you proceed slowly. Because of buses sturdy construction, it will be difficult to detect if you may have hit something or are side swiping something so extra caution and patents are necessary. If you suspect a change or detect something that doesn't seem right, get out and look again before you proceed slower. If there are students on the bus, keep all students on the bus. Some State laws require that if backing is required at or near a loading or unloading zone, all students must be seated on the bus during the backing. Because backing is done less often, you are usually not as comfortable or familiar with the maneuver, so remember the steps outlined above for safe backing.

FTA Publishes NPRM on School Bus Operations

FTA published its eagerly awaited Notice of Proposed Rulemaking on School Bus Operations in November's Federal Register. As you know, the agency had promised an overhaul of the regulation in light of the Court decision in Rochester and other instances where interpretations have stretched the limits of the current regulation. Interested parties (and readers of this newsletter are ALL interested parties) have until Feb. 17 to comment. NSTA will provide talking points and a copy of our comments to members, and we encourage you to submit your own comments. Remember that the transit industry will again rally their members—and their school district customers—to flood the docket with opposing comments, and we have to be able to balance those with support for our interests. FTA met with both NSTA and APTA prior to drafting the NPRM. The Council of Great City Schools also participated in the APTA meeting. In addition FTA considered the 600 comments they received on the proposed policy statement in formulating this proposal. The agency clearly tried to balance all interests in the NPRM, and we are generally pleased with the outcome. FTA states that this is not a significant rulemaking "because it does not anticipate the rule to adversely affect, in a material way, any sector of the economy. Through this rulemaking, FTA proposes to effectuate the purpose of the law and to clarify provisions to protect private school bus operators from unfair competition by federally subsidized public transit agencies; thus, these changes should increase economic opportunities for private school bus operators." Accordingly, FTA does not include detailed analyses but invites comments on the economic impact of the proposed regulations on small entities. Here are the highlights of the proposed rulemaking, including changes from the current regulation:

Definitions

The NPRM eliminates the definition for "tripper service" altogether. Tripper service is not part of the governing statute, and was added to the current regulation with no explanation at the last minute. NSTA advocated for elimination of the term, as it has been one of the two sources of misinterpretation of the regulation. The second problem term is "exclusively," which the NPRM defines it essentially as in the final policy statement:

"Exclusively means transportation that a reasonable person would conclude was designed primarily to accommodate school students, personnel, or equipment, without regard to demand from the non-student general public." The proposed definition of "school bus operation" is "transportation by bus exclusively for school students, personnel, and equipment." The proposal includes new definitions for terms that apply to private operators' ability to provide service:

"Adequate transportation" is "transportation for students and school personnel which the Chief Counsel determines conforms to applicable safety laws, is on time, poses a minimum of discipline problems, is not subject to fluctuating rates, and is operated efficiently and in harmony with state educational goals and programs;" and "reasonable rates" means "rates which are fair and equitable taking into consideration the local conditions which - Page 5 - surround the geographic service area where the rate is in question, including the portion of Federal assistance that a grantee uses or intends to use to provide school bus operations."

Prohibition on Service and Exemptions

The NPRM expressly prohibits a transit grantee from providing school bus operations except under one of the statutory exemptions or a new exemption, explained below. The current regulation does not include an express prohibition, but relies on the grantee's signed agreement that it will not provide school bus operations. Additionally, the NPRM expressly prohibits a grantee from contracting for school bus service. This allows FTA to intervene before the service begins, which it currently cannot do. (NSTA encountered this problem last summer when we filed a complaint alleging that the Sioux City school district had contracted with the transit agency to take over school bus routes in the fall. FTA replied that they could not investigate until the violation had actually occurred.) A new exemption incorporates the deviations from regular public service that are currently considered "tripper service." The exemption applies when "the grantee uses various fare collection or subsidy systems for students, the grantee modifies the frequency of service, and the grantee makes a one-half mile or less route deviation from a route within a one-half mile or less radius of a school building." These are the deviations that were clarified in the final policy statement, but are further delineated by the exact distances of the route variation. FTA specifically asks for comment on the distance proposal.

Exception for Private Operators

The NPRM eliminates the current exemption for no willing and able private operators, along with the notice requirements, which FTA acknowledges, are rarely followed. Instead, it proposes to allow a grantee to petition the Chief Counsel for an exception to the school bus operations prohibition if private school bus operators in the grantee's geographic service area are unable to provide adequate transportation at a reasonable rate and in conformance with applicable safety standards. In the petition, the transit agency must include (i) A description of the geographic service area that the applicant or grantee intends to serve;

(ii) A description of the schools and school districts that the applicant or grantee intends to serve;

(iii) A description of the anticipated ridership related to the school bus operation;

(iv) An estimation of the number and types of buses that the applicant or grantee intends to utilize for the school bus operation;

(v) A description of the duration of the school bus operation;

(vi) A description of the frequency of daily service related to the school bus operation;

(vii) An analysis regarding the extent, to which the proposed school bus operation complies with local, state, and Federal safety laws;

(viii) A summary of the fully allocated costs related to the school bus operation; and

(ix) The rate that the applicant or grantee intends to charge for the school bus operation.

FTA asks specifically for comment on what the fully allocated costs should include. Under the proposal, when FTA receives a petition, it will open an electronic docket for the petition and send a copy to NSTA. Within 30 days any private operator having a place of business in the grantee's geographic service area may submit comments on the Petition for an Exception Docket demonstrating the extent to which it can provide school bus operations that constitute adequate transportation at a reasonable rate and in conformance with applicable safety standards. At the end of the 30-day period, the transit agency can petition for an exception, showing why there is no private operator that can provide the service.

Complaint Procedure

The NPRM allows any interested party to file a complaint of violation within 90 days after the event-giving rise to the complaint occurs. (This may be problematic, as school bus service, unlike charter service, is not a one-time event; and we often are not aware of a violation until it has been going on for more than 90 days. There is no time limit in the current regulation.) Complaints will be filed with the Chief Counsel, not with the regional office, as is currently the case., and will be entered in an electronic docket. In determining whether there is a violation, the Chief Counsel may consider the following factors:

(1) Whether and to what extent the grantee designed and intended to - Page 6 - design its service to meet the demands of a school or school district; (2) Whether and to what extent the grantee controls its routes and schedules;

(3) Whether and to what extent students' residences and schools serve as the starting or ending points of a route; (4) Whether and to what extent the grantee publicizes the service at issue;

(5) Whether and to what extent the grantee's service displaces private school bus operators;

(6) Whether and to what extent the grantee's service is open to the public;

(7) The extent to which students and non-students utilize the grantee's service;

(8) Whether and to what extent the grantee operates its service during times when school is not in session;

(9) The frequency of the grantee's service during times when school is in session;

(10) Whether and the extent to which buses stop at clearly marked regular route stops.

This list is not exhaustive.

The NPRM sets forth-specific procedures and timelines for the complaint process, including specific information that must be included in both the complaint and responses to it. Two proposed additions to the current process are 1) it allows the transit agency to rebut the complainant's response; and 2) it allows an interested third party to intervene in the complain process if it believes that that the parties to the proceeding do not adequately represent the third party's interests and that it will suffer harm if the Chief Counsel does not grant its motion to intervene. While this provision might allow NSTA, for example, to intervene, it is most likely intended to allow school districts to do so. Interestingly, the proposed rule states that a prior oversight finding that the grantee was in compliance with the rule does not preclude the Chief Counsel from finding that a violation exists. This section is in response to the argument that most transit agencies put forth—that they had had a triennial review and were found in compliance. The rule also allows the chief Counsel to launch an investigation if he suspects a violation, which is not in the current rule.

Penalties

The proposed allows FTA to issue a cease and desist order if the Chief Counsel finds a violation. What's more, if the Chief Counsel determines that a grantee has violated the rule, he SHALL bar the grantee from the receipt of financial assistance for public transportation in an amount that the Chief Counsel considers appropriate. He may also impose other penalties. Parties may appeal the decision to the Administrator prior to seeking relief in Court. Administrative appeals are currently not allowed.

Deadlines and Grandfathering

Under the proposal, transit agencies have until June 30, 2010 to come into compliance with the rule. That will allow time for school districts to plan for the transition to private contractors. Grantees that were providing school bus operations at no charge to a school or school districts as of Aug. 1, 2008, are grandfathered under the proposal. They may continue to provide the service to that particular school or district as long as there is no charge. The deadline for comments on the

NPRM is Feb. 17, 2009. You can read the proposal at <http://edocket.access.gpo.gov/2008/E8-26683.htm>. To submit comments, go to www.regulations.gov and enter docket I.D. FTA-2008-0044.

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